

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
DANIEL B. YAHRAES, et al., :
: 10-CV-935 (MKB)
Plaintiffs, :
v. :
: 225 Cadman Plaza East
RESTAURANT ASSOCIATES EVENTS, : Brooklyn, New York
CORP., et al., :
:
Defendants. : May 18, 2012
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TRANSCRIPT OF CIVIL CAUSE FOR SETTLEMENT CONFERENCE
BEFORE THE HONORABLE STEVEN M. GOLD
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiffs: JUDITH SPANIER, ESQ.
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For the Defendants: ANDREW P. MARKS, ESQ.
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JEROME PATRICK COLEMAN, ESQ.
JOSEPH CARTAFALSA, ESQ.
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521 Fifth Avenue
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1 THE COURT: This is Civil Cause for Settlement
2 Conference, Yahraes v. Restaurant Associates, et al., 10-CV-
3 935.

4 Let me have appearances for the punitive class
5 plaintiffs.

6 MS. SPANIER: Judith Spanier, Abbey Spanier for
7 punitive class plaintiffs and individual -- the named
8 plaintiffs, the Hanagarnes whose name is in the caption.

9 THE COURT: Thank you. And your co-counsel is here
10 as well?

11 MR. SCHLEY: Yes, Mitchell Schley, Law Offices of
12 Mitchell Schley, same individuals.

13 THE COURT: All right. And the original first named
14 punitive class representative Daniel Yahraes remains in the
15 case but through new counsel. Please note your appearance.

16 MR. AMBINDER: Lloyd Ambinder with the firm of
17 Virginia & Ambinder.

18 THE COURT: Thank you, Mr. Ambinder. For Restaurant
19 Associates and its related defendants, if any.

20 MR. MARKS: The law firm of Littler Mendelson by
21 Andrew Marks.

22 THE COURT: And who's with you today, Mr. Marks?

23 MR. MARKS: I have Jennifer McConnell of Compass
24 Group.

25 THE COURT: Thank you. And for Amerivents and any

1 related defendants.

2 MR. CARTAFALSA: Putney, Twombly, Hall & Hirson by
3 Joe Cartafalsa.

4 MR. COLEMAN: And Jerome Coleman.

5 THE COURT: And with you today?

6 MR. COLEMAN: James Della Pace.

7 THE COURT: So we have been discussing settlement for
8 about three and a quarter hours together today and it is not
9 the first long session we've devoted to it but I think we have
10 reached an agreement and I would like to state its essential
11 terms on the record not to create an enforceable written
12 instrument because it contemplates procedures that we all have
13 to go through before we get to that point but sort of as a
14 placeholder so we know what we've agreed to today and can look
15 back going forward lest there be any confusion.

16 The total settlement fund that's been agreed to is
17 the amount of \$600,000.00. That fund will be funded by
18 \$300,000.00 contributions from Restaurant Associates and
19 Amerivents for a total of \$600,000.00. That amount includes
20 any claims for attorney's fees, any claims of any named
21 plaintiffs for any special payments, and the costs of
22 administering the class proceedings and settlement proceedings
23 that are anticipated by the parties.

24 Although there was some discussion of a reverter
25 provision in the agreement during our negotiations there is no

1 provision for a reverter agreement in the final agreement
2 reached by the parties.

3 The parties contemplate that they will consent to
4 adjudication -- reassignment for all purposes to this
5 magistrate judge, that they will submit a motion for
6 preliminary approval of class certification and the settlement
7 terms on consent, that they will use their best efforts to
8 agree upon an appropriate notice to the class, and to schedule
9 a fairness hearing sometime in the fall or latter part of
10 2012.

11 It is anticipated that all claims asserted in this
12 lawsuit will be released. It is anticipated that that
13 includes any cross-claims between the defendants and it is
14 expected that the plaintiffs will not pursue any claims for
15 the wages or tips at issue and described in the complaint in
16 this lawsuit in any way that implicates these defendants
17 before the court today once this settlement is consummated.

18 There was mention, and I don't know, Ms. Spanier, if
19 you referenced what you said to me in passing as the
20 defendants were joining us, but I think it was understood that
21 this agreement is reached and will be binding without regard
22 to any legislative changes that may or may not occur
23 concerning the use of the language service charge in an
24 agreement between a supplier of services and its clients.

25 Ms. Spanier, have I captured the essential terms

1 we've agreed to today accurately and they are acceptable to
2 you as a representative for the punitive class?

3 MS. SPANIER: Yes, you have, Your Honor.

4 THE COURT: Mr. Ambinder, with respect to Mr.
5 Yahraes, are these consistent with the understanding he had
6 when he agreed to these terms?

7 MR. AMBINDER: Yes, Your Honor.

8 THE COURT: Mr. Marks, have I described the
9 Restaurant Associate defendant's agreement accurately?

10 MR. MARKS: Yes, Your Honor.

11 THE COURT: Is there anything you would add to it in
12 any way?

13 MR. MARKS: No, thank you.

14 THE COURT: Mr. Cartafalsa, what about with respect
15 to Amerivents?

16 MR. CARTAFALSA: Yes, Your Honor. We have nothing to
17 add.

18 THE COURT: All right. Mr. Ambinder, we didn't pick
19 you up on the record but you agree that Mr. Yahraes finds
20 these terms acceptable as well; correct?

21 MR. AMBINDER: Yes, I do, Your Honor.

22 THE COURT: Thank you, Mr. Ambinder.

23 What I'd like you -- we have some interstitial dates
24 now to fill in that if counsel want to sit here and do that
25 now it's fine with me and I'll come back in another twenty or

1 thirty minutes and put them on the record but if you'd like to
2 consult your calendars and some of the staff that might be
3 employed to accomplish them I have no objection to getting a
4 letter from you in two weeks that has a stipulated schedule
5 for the motion for preliminary approval. I think the 216(b)
6 process is over in this case. Have we ever sent out a 216(b)
7 notice?

8 MS. SPANIER: We have, Your Honor.

9 THE COURT: So we're now left with all of the Rule 23
10 acuchamons that follow a class action settlement and I'd like
11 to see a joint proposed schedule in two weeks and maybe you
12 can file a consent form at the same time so that I can be the
13 one to review and approve it instead of asking Judge Brodie to
14 get acquainted with these turbulent waters.

15 Is there anything else anybody wants to raise before
16 we adjourn for the day?

17 MS. SPANIER: Your Honor, we simply want to thank you
18 for your efforts in this mediation on the record.

19 THE COURT: It's a pleasure. When you have capable
20 well prepared even tempered attorneys coming to work is a joy.
21 And with you guys it's not so bad either. It's still sunny
22 out. Enjoy the afternoon. Take care.

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1 I certify that the foregoing is a court transcript from
2 an electronic sound recording of the proceedings in the above-
3 entitled matter.



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5 _____
6 Shari Riemer

7 Dated: August 1, 2012
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